



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

February 16, 2022

Re: FOIA Request NLRB-2022-000513

Dear Mr. Michael Lufkin (Rogers Towers, P.A.):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on January 31, 2022, in which you seek “all records in *Ozinga Ready Mix Concrete, Inc.*, Case No. 13-RC-287936.” You assumed financial responsibility for the processing of your request in the amount of \$37.00.

We acknowledged your request on January 31, 2022.

Your request is denied in part and granted in part, as explained below.

After conducting a search of the Agency’s electronic casehandling system, NxGen, I have determined that certain records responsive to your request are part of an investigative file in an open case before the Agency’s Region 13, and therefore, are exempt from disclosure pursuant to Exemption 7(A) of the FOIA. 5 U.S.C. § 552 (b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with enforcement proceedings. *See NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). Therefore, given the open status of the proceedings involving the requested petition, with a mail ballot election still pending/ongoing, any investigatory records in the case file are being withheld in full at this time pursuant to Exemption 7(A), because, if disclosed, such disclosure could interfere with the pending case. Please note there is no tally of ballots at this time.

In addition, since your request also mentions the voter list in the file, please be advised that it is separately and entirely exempt, and thus withheld, pursuant to FOIA Exemptions 6 and 7(C) (5 U.S.C. §§ 552(b)(6) and (b)(7)(C)), since its disclosure could constitute an unwarranted invasion of privacy. Exemption 6 permits agencies to withhold information about individuals in “personnel and medical and similar files” where the disclosure of the information “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration*

Review, 830 F.3d 667, 673 (D.C. Cir. 2016). The “files” requirement covers all information that “applies to a particular individual.” *U.S. Dep’t of State v. Wash. Post Co.*, 456 U.S. 595, 601-02 (1982). See also *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 198-99 (D.C. Cir. 2006) (Exemption 6 should be “read . . . to exempt not just files, but also bits of personal information, such as names and addresses”). Exemption 7(C) permits agencies to withhold information compiled for law enforcement purposes where disclosure of the information “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C); *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 756 (1989).

Employee voter lists are investigative records obtained or created by the Agency for the purpose of enforcing the National Labor Relations Act, and contain individuals’ names, addresses and other identifying information that fit squarely within the types of privacy interests that Exemptions 6 and 7(C) were intended to protect. Specifically, employee voter lists are compilations of private information on employees which alone do not reveal anything about the Board’s performance of its duties. See *Reed v. NLRB*, 927 F.2d 1249, 1251 (D.C. Cir. 1991) (affirming denial of request for disclosure of [voter] lists, stating that the lists at issue contain exclusively private information and would reveal nothing about the Board’s conduct of representation proceedings or any other statutory duty); *Reporters Committee*, 489 U.S. at 773 (compilations of information on private individuals reveal little about government conduct). As such, there is no public interest in disclosure. The public’s interest in disclosure depends on “the extent to which disclosure would serve the ‘core purpose of the FOIA,’ which is ‘contribut[ing] significantly to public understanding of the operations or activities of the government.’” *U.S. Dep’t of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495 (1994) (emphasis in original), quoting *Reporters Comm.*, 489 U.S. at 775. No such public interest is evident here that outweighs the private interests identified and the voter list in this case would be withheld in full under FOIA Exemptions 6 and 7(C) (5 U.S.C. §§ 552(b)(6) and (b)(7)(C)).

Your request is granted to the extent that I have attached the available formal records in the case, which are releasable to the public pursuant to NLRB FOIA regulations. Upon my review, redactions have been made to portions of these records to protect the privacy interests of individuals named in the records. These redactions were made pursuant to Exemption 6 and Exemption 7(C), as explained above.

Please note that Exemption 7(A) protection is “temporal in nature.” *Citizens for Responsibility & Ethics in Wash. v. Dep’t of Justice*, 746 F.3d 1082, 1097 (D.C. Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). As such, some other case file records may become disclosable, subject to applicable exemptions, after the case closes, that is, a certification of results has issued, a bargaining representative has been certified, or the matter is otherwise

closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of this case can be tracked on the Agency website at www.nlr.gov by going to the Cases & Decisions tab, clicking case search, entering the case number in the search box and viewing the case page or by clicking the link here: <https://www.nlr.gov/case/13-RC-287936>.

For the purpose of assessing fees, we have placed you in Category A, commercial use requester. This category refers to requests “from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(v). Consistent with this fee category, you “will be assessed charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.” 29 C.F.R. § 102.117(d)(2)(ii)(A). Charges are \$9.25 per quarter-hour of professional time. 29 C.F.R. § 102.117(d)(2)(i).

One hour of professional time was expended in searching for and reviewing for release the requested material. Accordingly, please remit \$37.00.

Payment Instructions: Due to the COVID-19 pandemic and resulting widespread employee telework at the Agency’s Headquarters offices, we are no longer accepting checks or money orders as payment at this time. To submit payment for your FOIA request, please use www.pay.gov. From the www.pay.gov home page, scroll down to the bottom left corner to select “Pay a FOIA Request.” Click “See all options” and go to “Filter By Agency” to check the box for the National Labor Relations Board. Continue following instructions on the website. Please remember to include the Invoice Number, which is the NLRB FOIA Case No., and the amount you intend to pay. Further, please be advised that all FOIA payments must be paid in full before any future FOIA requests are processed.

You may contact Teresita Sanabria, the FOIA Specialist, who processed your request, at (202) 273-4000 or by email at Teresita.Sanabria@nlrb.gov, as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Specialist, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency’s FOIA Public Liaison is:

FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor

Washington, D.C. 20570

Email: FOIAPublicLiaison@nrlb.gov

Telephone: (202) 273-0902

Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services

National Archives and Records Administration

8601 Adelphi Road-OGIS

College Park, Maryland 20740-6001

Email: ogis@nara.gov

Telephone: (202) 741-5770

Toll free: (877) 684-6448

Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt

Chief FOIA Officer

National Labor Relations Board

1015 Half Street, S.E., 4th Floor

Washington, D.C. 20570

Email: DLCFOIAAppeal@nrlb.gov

Any appeal must be postmarked or electronically submitted within 90 days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Specialist, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop

the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling
FOIA Officer

Attachment: (53 pages)